

No. 541, dated the 28th April, 1976

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 28th April, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 4238-4Lab-76/18156.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Hissar Textile Mills, Hissar, (2) the H. T. M. Employees Co-operative Consumer Store Limited, Hissar.

BEFORE-SHRI-MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 102 of 1975

between

THE WORKMEN AND THE MANAGEMENT OF M/S (1) HISSAR TEXTILE MILLS,
HISSAR, (2) THE H.T.M. EMPLOYEES CO-OPERATIVE CONSUMERS STORE LIMITED,
HISSAR.
AWARD

By order No. ID/HSR/29-C-75/31710, dated 3rd June, 1975, the Governor of Haryana, referred the following dispute between the management of M/s Hissar Textile Mills, Hissar, (2) The H.T.M. Employees Co-operative Consumers Store Limited, Hissar, and its workman to this Tribunal, for adjudication in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

- (1) Whether the workmen working in mill canteen are entitled to the grant of Bonus at a higher rate than 8.33 per cent for the year 1973-74? If so, with what details?
- (2) Whether the workmen working in mill canteen are entitled to be provided quarters or in lieu thereof Rs 25 per month as house rent? If so, with what details?
- (3) Whether the sweepers working in mill canteen are entitled to be provided winter uniforms and shoes? If so, with what details?
- (4) Whether the workmen working in mill canteen should be provided leave books? If so, with what details?
- (5) Whether the workmen working in mill canteen are entitled to Re. 1/- per day for break fast? If so, with what details?

The parties put in their appearance in this Tribunal in response to the usual notices of reference sent to them and filed their pleadings.

The Hissar Textile Mills, Hissar hereinafter referred to as the Mills raised a preliminary objection amongst other pleas, that the reference was legally barred under settlement dated 26th April, 1961, 4th April, 1966, and 2nd November, 1970 arrived at between them and their workmen and that unless the later exhausted the remedies provided in these settlements in respect of their approaching the screening committee for the redress of their grievances, they had legally no right to raise a demand directly on the Mills and get a reference made for adjudication of the dispute.

The workmen while not denying the correctness of the settlements relied on by the mills *vide* rejoinder filed by them controverted this preliminary objection and gave out that the management were under an obligation to put up their demand before the screening committee and that they had not called their 'workmen' representatives to participate in the screening committee and on the other hand denied representation to the District Textile Workers Union in the screening committee.

The following preliminary issue was thus framed on pleas of the parties,—*vide* my order dated 17th September, 1975:—

Whether the reference made by the Government is invalid bad in law and unmaintainable on the grounds of failure of the workmen to approach the screening committee and adopt other procedure as incorporated under the settlement dated 26th April, 1961, 4th April, 1966, 2nd November, 1970 for redress of their grievances and grant of relief prayed for,—*vide* notice of demand?

The management in order to prove their case on the aforesaid issue examined Shri J. P. Sangal, their Industrial Relation Officer, M. W. 1, a signatory on behalf of the management, of the settlements, dated 4th April, 1966, 4th April, 1966 and 2nd November, 1970, Exhibit M-2, M-3 and M-4. He deposed that the settlements, Exhibit M-2, M-3 and M-4 were executed by the parties in his presence and that the same bore his signatures in his capacity as representative for the management and that Sarvshri Sagar Ram Gupta and Baij Nath signed these settlements on behalf of the workmen in presence of Shri J. D. Mehta, the then Conciliation Officer, Bhiwani, even Shri Richpal Singh, Secretary, District Textile Workers Union, Hissar, admitted the signatures of Shri V. K. Khanna on the settlement, Exhibit M-4 and the signatures of Gulzarí Lal and Om Parkash on settlement, dated 2nd November, 1970, Shri M. M. Jain, Conciliation Officer on the settlement, dated 26th April, 1961 and the signatures of Shri J. D. Mehta, Conciliation Officer, Bhiwani, on the settlement, dated 4th April, 1966, Exhibit, M-2.

It would thus appear that the correctness and execution of settlement relied on by the management is not denied and the same is on the other hand impliedly admitted. The only grievance of the workmen, members of District Textile Workers Union, Hissar, who had actually raised the demand leading to this reference was that their union as such was not a party to any of these settlements and that it was not allowed to be represented by the Mills in the screening Committee and that the management declined to take this union in confidence despite repeated requests made by it and as such these settlements were not binding on the aforesaid union and the members thereof. Shri Richpal Singh in this connection brought on record documents Exhibit W-1 to W-7 in order to establish the repeated request made by the District Textile Workers Union, Hissar, for their representation in the screening committee and denial of the management to accede to their request.

I have given the matter my careful consideration and seen the settlements Exhibit M-2 to M-4 relied on by the management. I find that Sarvshri Shiv Lal Yadav, President and Rajinder Nagar, General Secretary, Hissar Textile Mills Workers Union, Hissar, signed the settlement, dated 4th April, 1966, Exhibit M-3, on behalf of the workmen of that union and three sets each of two workmen representing Hissar Textile Mazdoor Sang, Hissar, Textile Union and Mazdoor Hitkari Mandal, signed the settlement, Exhibit M-4, dated the 2nd November, 1970, on behalf of these unions and Sarvshri Sagar Ram Gupta and Baij Nath signed the settlement, Exhibit M-2, dated 4th April, 1966, on behalf of the workmen of Hissar Textile Mazdoor Sangh, Hissar. It is thus established that all the workmen of the Mills were duly represented at the time of execution of the settlements by their representatives under section 12 (2) of the Industrial Disputes Act which have a binding effect on all of them under section 18 (3) and it does not now lie in the mouth of some of the workmen of the mills to say that they were not bound by the settlement only because a particular union admittedly registered in the year 1968 was not allowed representation in the screening committee. I thus hold that all the workmen of the Mills are bound by the settlements relied on by the management.

The demand leading to this reference having been raised on 22nd November, 1974, it is obvious that the parties would be governed by the settlement, dated 2nd November, 1970, Exhibit M-4, which in turn extended the term of the settlement, dated 4th April, 1966, for the period ending 4th April, 1976, including that of the procedures to be followed redress of the grievances of either party. It is thus necessary to state in *extenso* such a procedure as provided in the settlements, dated 4th April, 1966 Exhibit M-3 and M-2 as under:—

- “(i) All disputes of general nature including cases of dismissal (other than individual complaints to be redressed through Grievance machinery referred to in the settlement dated 26th April, 1961, such as rationalisation, work loads, etc., etc. shall henceforth be settled by direct negotiations to be held in the Screening Committee. The Screening Committee will consist of two representatives nominated by the management and two from amongst the employees nominated by the Union. The Screening Committee will be presided over by the General Manager of the Mills.
- (ii) In case, on any matter, the Screening Committee is not able to arrive at an agreed solution, the matter will be referred to an arbitrator or to be appointed by the parties.
- (iii) In case no arbitrator acceptable to both parties can be appointed the parties may refer the matter for conciliation or adjudication through the machinery provided under the Industrial Disputes Act.”

The workmen in view of the terms of the settlements, Exhibits M-2 and M-3 relating to the procedure of redress of their grievance were under an obligation to have recourse to such a procedure,—*vide* 1973-1-LIJ-182, M/s Atlas Cycle Industries, Sonapat *versus* their workmen and their admitted failure to do so as a preliminary essential requisite legally debarred them from raising a demand directly on the management and to get their grievance redressed through the machinery of an Industrial Tribunal.

I, therefore, up held the plea of the management covered by the preliminary issue as stated above and decide the same in their favour with a finding what the reference as made to this Tribunal by the Government in respect of the disputes stated above, between the workmen and Hissar Textile Mills, Hissar, is bad in law and cannot be adjudicated upon. The reference between the workmen and Hissar Textile Mills Employees Cooperative Consumer Store Ltd., Hissar, shall however be proceeded with. Notice be issued to these parties for appearance before me on 3rd June, 1976, at Bahadurgarh.

MOHAN LAL JAIN,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 26th April, 1976.

No. 543, dated the 28th April, 1976

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 28th April, 1976.

MOHAN LAL JAIN,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 5439-4Lab-76/18158. In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the Management of M/s Hindustan Vaccum Glass Ltd., Faridabad.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 7 of 1971

between

SHRI SATINDER KUMAR GUPTA, WORKMEN AND THE MANAGEMENT OF M/S
HINDUSTAN VACCUM GLASS LTD. FARIDABAD.

AWARD

By order No. ID/FD/568-C-70/55920-24, dated 28th December, 1970, of the Governor of Haryana, the following dispute between the management of M/s Hindustan Vaccum Glass Ltd., Faridabad and their workman Shri Satinder Kumar Gupta, was referred to this Court for adjudication, in exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of service of Shri Satinder Kumar Gupta was justified and in order? If not, to what relief is he entitled?

The parties put in their appearance in this court in response to the usual notices of reference sent to them and filed their pleadings.

The workman alleged, *-vide* claim statement filed by him, that the findings of the Enquiry Officer holding the charge of misconduct established against him were perverse and illegal, and were not borne out from the evidence of the management, recorded by him and that the same were based on speculation and imagination.

The management pleaded, *-vide* written statement filed by them that the reference made to Shri P.N. Thukral, Presiding Officer of the Labour Court, Haryana, was illegal on the ground of illegality of the appointment of the later as Presiding Officer, Labour Court, Haryana. On facts the management while admitting Shri Satinder Kumar Gupta as their workman denied the allegation that the findings of the Enquiry Officer were perverse and not borne out from the evidence led by the management and that the charge framed against him had not been established. They stated that the Enquiry was held strictly in accordance with principles of natural justice and was as such regular and legal in all respects and that even otherwise the workman was estopped from raising the plea of the illegality of the findings of the Enquiry Officer as a result of the approval already granted by the Industrial Tribunal of the order of his dismissal by the management earlier, *-vide* order, dated 1st July, 1970.

The workman reiterated the allegations made by him in the claim statement, while controverting the pleas of the management,—*vide* rejoinder filed by him.

An issue in terms of the dispute referred to this Court in the manner as stated above was framed,—*vide* order, dated 14th September, 1971 after it had been held that the appointment of Shri P.N. Thakural as Presiding Officer, Labour Court by the Government was valid and legal in all respects and the preliminary objection raised by the management had no merit.

The workman was charged on 14th August, 1969 for his having committed misconduct falling under section 26, clause (III), (XVI), (XXII), (XXXIII) & (XXVI) of Standing Orders of the management as applicable to him. It was alleged that on 14th August, 1969 at about 10.00 A.M. he absented himself from duty three times resulting in the stoppage of the Adda and wastage of ten refills (bottles) and that he thus will-fully caused damage to the property of the management by throwing two refills in the Cullet bin and that he threatened, intimidated his superior and disobeyed the standing rules while litering in the premises of the factory and committing acts subversive of discipline.

The workman *vide* written reply filed by him explained his absence that he had to go to the workshop for sharpening his file and that on his return he asked his helper to keep the refill aside as it was not possible to join the tubes at that time and this could be done subsequently, and that the technical assistant, there-upon abused him and the matter was reported to the S.G.T. who had come there.

Shri H. N. Shrivastva, appointed as an Enquiry Officer, as a result of appraisal of the evidence led before him by the parties held all the charges fully established,—*vide* his report, dated 29th September, 1969 and the management on consideration of his findings dismissed the workman,—*vide* order dated 10th October, 1969.

The workman appearing as his own witness admitted that on the management moving an application under section 33(2)(b) of the Industrial Disputes Act, the Industrial Tribunal granted approval of their action of dismissing him from their services while holding the enquiry in accordance with principles of natural justice and rejecting his plea that he had not been supplied with the copies of the documents, list of the witness and that he had not been allowed to inspect the record of proceedings. The copy of the order of the Industrial Tribunal, Haryana dated 1st July, 1970, Exhibit W. 1 also points to the same conclusion. It was held in 24-PJR (63-64 page 406) that a finding made by an Industrial Tribunal, relating to the vires of the enquiry while granting approval of the action to the management of dismissing the workman, cannot be subsequently reviewed by the same Tribunal in a reference made to it by the appropriate Government. The learned authorised representative for workman relied on 1959-2 LLJ-666 in support of his contention that such a finding could be reviewed in a reference after having gone through both these authorities of the Hon'ble Supreme Court, I propose to follow the latter view and hold that the order made by an Industrial Tribunal in respect of the vires of enquiry in an application under section 33(2)(b) of the Act can not be disturbed by the same Tribunal in a reference made subsequently by an appropriate Government in absence of very special circumstance not found established in the instant case. I, therefore up-hold the findings of the Tribunal made,—*vide* order dated 1st July, 1970, Exhibit W. 1.

Assuring that the findings by the Tribunal made earlier in an application under section 33(2)(b) of the Act in respect of the vires of the enquiry can be disturbed in a reference it remains to see as to whether there is no material on record justifying such action.

I have gone through the entire record of enquiry held by Shri H. N. Shrivastava and his findings dated 29th September, 1969. I find that the management examined Shri P.K. Sharma, Technical Assistant N.W. 1., Shri S.C. Sharma, Senior Class Technologist N.W. 2, Shri Gian Singh M.W. 3, Shri Paiyale Lal M.W. 4, who all corroborated the case of the management on the charges framed against the workman. The charge of his absence from duty is found otherwise admitted by the admission of the workman that he had left the place of his duty for sharpening his file. I find that full opportunity was given to the workman to cross examine the witnesses of the management and adduce his own evidence and he actually participated in the enquiry on every hearing. No fault can be found with the proceedings of the enquiry taken up by the enquiry officer. There is no evidence on record relating to an attempt of the management to victimise the workman or in respect of the order of dismissal being motivated. The findings of the enquiry officer are found fully borne out by the evidence of the witnesses examined by the management and it cannot be said that the findings are proverse and could not be given by a prudent person on the basis of the evidence led by the management. The reference having been made before 15th December, 1971 the date of amendment of the Industrial Disputes Act with the addition of section 11(a) therein, I am not competent in law either to appraise the evidence led by the parties before the Enquiry Officer nor to determine the adequacy of punishment. The workman is not found to have made a request to the enquiry officer for grant of copies of documents applied for by him to the management in compliance with the orders of the management conveyed to him,—*vide* their letter dated 20th August, 1969.

I thus hold on consideration of the records of enquiry and statement of the Enquiry Officer made in this court, that the enquiry was held in accordance with the principles of natural justice and the action of the management in dismissing the workman has not been proved to be mala fide or motive for victimising him and